

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) SCOTTY J. FULLER,

Plaintiff,

v.

(1) BLUE CROSS BLUE SHIELD OF
OKLAHOMA, a division of HEALTHCARE
SERVICE CORPORATION and
(2) HEALTH CARE SERVICE
CORPORATION, Operating in Oklahoma as
Blue Cross and Blue Shield of Oklahoma,

Defendants.

Case No. 22-cv-106-JAR

NOTICE OF REMOVAL

Health Care Service Corporation, an Illinois Mutual Legal Reserve Company, operating in Oklahoma as Blue Cross and Blue Shield of Oklahoma (“BCBSOK”), hereby gives notice of removal of Case No. CJ-19-37, *Scotty J. Fuller v. Blue Cross and Blue Shield of Oklahoma, et al.*, from the District Court of Pushmataha County, Oklahoma, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Removal of this action is proper because diversity jurisdiction exists and the amount in controversy exceeds \$75,000.

I. BACKGROUND

1. On September 19, 2019, Plaintiff Scotty J. Fuller (the “Plaintiff”), filed a civil action against BCBSOK in the District Court of Pushmataha County, Oklahoma, captioned *Scotty J. Fuller v. Blue Cross and Blue Shield of Oklahoma, et al.*, Case No. CJ-19-37 (the “State Action”). See Plaintiff’s Original Petition (the “Petition”), attached hereto as Exhibit 2.

2. BCBSOK was served on March 08, 2022. See Exhibit 3.

3. In the Petition, Plaintiff purports to allege causes of action against BCBSOK for breach of contract, bad faith and fraud, and false representation, concealment and deceit. *See* Exhibit 2 ¶¶ 19–37.

II. DIVERSITY JURISDICTION

4. This Court possesses original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and removal is thus proper under 28 U.S.C. §§ 1441(b) and 1446.

5. Under 28 U.S.C. § 1332, federal courts have original federal jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

A. Amount in Controversy

6. On the face of the Petition, Plaintiff seeks relief in excess of \$75,000. “The amount in controversy is ordinarily determined by the allegations of the complaint.” *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995). “When both actual and punitive damages are recoverable, punitive damages are properly considered in determining whether the jurisdictional amount has been satisfied.” *Flowers v. EZPawn Okla., Inc.*, 307 F. Supp. 2d 1191, 1199 (N.D. Okla. 2003) (citing *Bell v. Preferred Life Assur. Soc’y*, 320 U.S. 238, 240 (1943)). In considering potential punitive damages, the court must consider the allegations in the complaint and facts contained within the notice of removal “to determine the amount of punitive damages that may be considered part of the amount in controversy.” *Schantes v. Allstate Ins. Co.*, No. CIV-09-0720-F, 2009 WL 10671534, at *2 (W.D. Okla. Oct. 13, 2009).

7. Here, Plaintiff seeks “an amount in excess of \$75,000, for actual damages and punitive damages, together with interest and costs of this action” and for attorney fees. *See* Exhibit 2, p. 6. Given Plaintiff’s allegations, the amount in controversy, which includes potential punitive damages, exceeds \$75,000. Therefore, removal is appropriate under 28 U.S.C. § 1332.

B. Plaintiff Is an Oklahoma Citizen and BCBSOK Is an Illinois Citizen

8. Additionally, the parties are citizens of different states. Plaintiff is a resident of the State of Oklahoma. *See* Exhibit 2, ¶ 1.

9. Defendant is a citizen of the State of Illinois because Health Care Service Corporation (“HCSC”) is a corporation duly organized and existing under the laws of the State of Illinois, and BCBSOK is an unincorporated division of HCSC. As such, BCBSOK is a citizen of the state in which HCSC is incorporated and maintains its principal place of business. *See Shattuck Pharmacy Mgmt. P.C. v. Prime Therapeutics, LLC*, No. CIV-21-0221-F, 2021 WL 2667518, at *4 (W.D. Okla. June 29, 2021) (holding that “BCBSOK is deemed a citizen of Illinois” because “[a]s an unincorporated division of HCSC, the citizenship of BCBSOK is the same as the citizenship of HCSC”); *see also Equifax Servs., Inc. v. Hitz*, 905 F.2d 1355, 1358 n.2 (10th Cir. 1990) (quoting *Brunswick Corp. v. Jones*, 784 F.2d 271, 275 n.3 (7th Cir. 1986) (holding that “for diversity purposes, unincorporated division’s citizenship is same as corporation of which it is a part”)).

10. Accordingly, because the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship between Plaintiff and BCBSOK, this action is properly removed under 28 U.S.C. §§ 1332, 1441, and 1446.

III. COMPLIANCE WITH THE REMOVAL STATUTE

11. This Notice of Removal is properly filed in the United States District Court for the Eastern District of Oklahoma, pursuant to 28 U.S.C. § 1446(a), because the District Court of Pushmataha County, State of Oklahoma, is located in this federal judicial district. *See* 28 U.S.C. § 1441(a).

12. This Notice of Removal is being filed with this Court within thirty (30) days of the date of service of the Petition.

13. Written notice of the filing of this Notice of Removal will be provided to Plaintiff and filed in the appropriate state court as required by 28 U.S.C. § 1446(d).

14. Pursuant to 28 U.S.C. § 1446(a) and LCvR 81.2, copies of all process, pleadings, and orders served upon BCBSOK, as well as the state court docket sheet, are attached as Exhibits 1-7.

15. The undersigned has signed this Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, in accordance with 28 U.S.C. § 1446(a).

IV. CONCLUSION

WHEREFORE, Defendant Health Care Service Corporation, an Illinois Mutual Legal Reserve Company operating in Oklahoma as Blue Cross and Blue Shield of Oklahoma, removes this action from the District Court of Pushmataha County, State of Oklahoma, to the United States District Court for the Eastern District of Oklahoma, and requests that this Court retain jurisdiction for all further proceedings in this matter.

Respectfully submitted,

s/ Paige A. Masters

Paige A. Masters, OBA #31142

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2022, I electronically transmitted the foregoing document to the Court Clerk using the ECF system of filing, which will transmit a Notice of Electronic Filing to the following ECF registrants:

Tim Maxcey
STIPE LAW FIRM
P.O. Box 1369
McAlester, OK 74502

ATTORNEY FOR PLAINTIFF

Further, this is to certify that a copy of said Notice of Removal will be hand-delivered to the Pushmataha County Court Clerk, in Antlers, Oklahoma, for filing on April 7, 2022.

/s/ Paige A. Masters

Paige A. Masters